

Katie Ali

From: McKeel, Lisa (USAVAE) <Lisa.McKeel@usdoj.gov>
Sent: Tuesday, August 1, 2023 8:12 AM
To: Katie Ali; Samuels, Brian (USAVAE); Ward, Carrie (CRM); Jahn, Margaret (USAVAE)
Cc: epeiffer_vcrrc.org
Subject: RE: Runyon v. USA - Martell/Batipps Documents

Good morning Katie,

I just wanted to update you and Elizabeth this morning. Brian is still in trial and our two paralegals are out of the office. We should be able to get back to you all by the end of the week. I am not sure I understand your timing issue of meeting your obligation to produce discovery by August 31. Perhaps, we can have a conference call at the end of the week to discuss.

Lisa

Lisa R. McKeel
Assistant United States Attorney
Eastern District of Virginia
Newport News Division
757-591-4040

From: Katie Ali <katie.ali@alilockwood.com>
Sent: Sunday, July 30, 2023 1:19 PM
To: Samuels, Brian (USAVAE) <BSamuels1@usa.doj.gov>; McKeel, Lisa (USAVAE) <LMcKeel@usa.doj.gov>; Ward, Carrie (CRM) <Carrie.Ward@usdoj.gov>; Jahn, Margaret (USAVAE) <MJahn@usa.doj.gov>
Cc: epeiffer_vcrrc.org <epeiffer@vcrrc.org>
Subject: [EXTERNAL] RE: Runyon v. USA - Martell/Batipps Documents

Hi all,

I am following up on my emails from last week and telephone conversation with Carrie on Friday. We have received records from Dr. Martell (attached) reflecting that he billed hours to the case in the weeks leading up to the trial in 2009, transmitted several invoices to Brian at that time, and was paid for his work by the government. This is inconsistent with the government's position that no records exist concerning Dr. Martell from the time of trial. It also suggests that other documents – such as the Form USA-47s (or OBD-47) (Request, Authorization and Modification of Contract for Services), contracts, and communications between trial experts and the government in connection with their retention – must exist, or at least must have existed at some time. In light of this, I am reiterating my earlier requests for clarification concerning the reason the government has nothing to disclose related to the trial experts. Is it your position that no information/documents concerning Drs. Martell or Batipps from the time of trial ever existed? If that is the case, how can that be squared with the records we have now received from Dr. Martell? Are you instead contending that this information may have existed at one point but no longer exists? Something else? Could you also please clarify what you meant in your July 26 email that the government has “made any *relevant* productions of this information”? Is there information in the government's possession but that has been withheld on the basis of relevance (or pursuant to some other basis)?

I appreciate that you have agreed to conduct a further search of the government's files. While I would very much prefer to allow that process to play out before raising this issue with the court, I am concerned about timing in light of the

approaching August 31 discovery deadline. Given this deadline and my obligation to protect my client's interests, I feel I have no choice but to file a discovery motion early this coming week. I will state in the motion something reflecting that we are continuing to meet and confer on this issue and attempting to reach a resolution, but that the motion was filed in an abundance of caution given the approaching discovery deadline. If you have an alternative proposal for how to address the issue given the timing, I am happy to consider it.

Thank you,
Katie

From: Katie Ali

Sent: Wednesday, July 26, 2023 6:57 PM

To: Samuels, Brian (USAVAE) <Brian.Samuels@usdoj.gov>; McKeel, Lisa (USAVAE) <Lisa.McKeel@usdoj.gov>; Ward, Carrie (CRM) <Carrie.Ward@usdoj.gov>; Jahn, Margaret (USAVAE) <Margaret.Jahn@usdoj.gov>; epeiffer_vcrrc.org <epeiffer@vcrrc.org>

Subject: RE: Runyon v. USA - Martell/Batipps Documents

Hi Brian,

I appreciate your willingness to have someone in your office look again for this information. In the immediate term, all I am asking for is clarification of your previous responses so I can make sure I accurately understand the government's position. At this point I am unclear of the reason the government has nothing to disclose related to the trial experts. For example, when you stated during the meet and confer that there is nothing to disclose concerning experts from the time of trial, did you mean that no such information/documents ever existed? That it may have existed at one point but no longer exists? Something else? Could you also please clarify what you mean when you say in your email below that the government has "made any *relevant* productions of this information"? Is there information in the government's possession but that has been withheld on the basis of relevance (or pursuant to some other basis)?

I understand that you may need more time than just this week to do any actual substantive records review, but I would hope that these clarifying questions could be quickly and easily answered (and do not require Margaret's help).

Thank you,

Katie

From: Samuels, Brian (USAVAE) <Brian.Samuels@usdoj.gov>

Sent: Wednesday, July 26, 2023 12:28 PM

To: Katie Ali <katie.ali@alilockwood.com>; McKeel, Lisa (USAVAE) <Lisa.McKeel@usdoj.gov>; Ward, Carrie (CRM) <Carrie.Ward@usdoj.gov>; Jahn, Margaret (USAVAE) <Margaret.Jahn@usdoj.gov>; epeiffer_vcrrc.org <epeiffer@vcrrc.org>

Subject: RE: Runyon v. USA - Martell/Batipps Documents

Katie – Thanks for your email. We will look into your questions. As mentioned in our last call, we believe had made any relevant productions of this information. In terms of our ability to further review at present, Margaret (our paralegal) is out on leave this week, Lisa has some medical appointments and I am getting ready for a trial starting on 7/31. Thus, it is unlikely we will be able to respond to you in the three days you have allotted. We will endeavor to do so as soon as we can. If you think you need to go the Court on this by Friday, we will of course be prepared to offer our response.

We reviewed the production you provided last week. Much of this is duplicative of what we had already received, but we understand you will complete production by 8/31.

Best – BJS

Brian Samuels
Managing Assistant United States Attorney
Newport News Division
Eastern District of Virginia

From: Katie Ali <katie.ali@alilockwood.com>
Sent: Tuesday, July 25, 2023 1:23 PM
To: Samuels, Brian (USAVAE) <BSamuels1@usa.doj.gov>; McKeel, Lisa (USAVAE) <LMcKeel@usa.doj.gov>; Ward, Carrie (CRM) <Carrie.Ward@usdoj.gov>
Subject: [EXTERNAL] Runyon v. USA - Martell/Batipps Documents

Hi all,

I am writing to follow up about the government's records concerning Drs. Martell and Batipps. My understanding from when we discussed this issue during the June 23 meet and confer is that it is your position that the government has turned over all records in its files relating to both Dr. Martell and Dr. Batipps. Specifically, I believe Lisa stated that all correspondence, draft reports, and contracts with Dr. Martell from the post-conviction proceedings had been turned over to prior postconviction counsel, and that the government does not possess any documents concerning Dr. Martell from the time of trial. As an initial matter, could you please confirm that (i) I have accurately stated your position, and (ii) the same applies to Dr. Batipps?

My review of prior counsel's files is ongoing, but I have not yet seen any documents from the government relating to either expert. At a minimum, I would have expected to have received, for both Dr. Martell and Dr. Batipps: (i) the Form USA-47s (or OBD-47) (Request, Authorization and Modification of Contract for Services), (ii) contracts from the pre-trial and postconviction phases, (iii) any communications between Dr. Martell and the government in connection with the retention, and (iv) any communications between Dr. Batipps and the government in connection with the retention. To the extent it is your position that you have already turned each of these categories over, could you please produce them and/or provide a record of when they were produced and to whom so we can try to locate them in prior counsel's files? If it is your position that the government does not possess some or all of these categories of information, please clarify whether you claim that the information never existed or simply that these documents are no longer in the government's possession. If the latter we would also ask for confirmation that the documents are not accessible through your Administrative/Budget Officer or another section of DOJ such as the EOUSA, Special Authorization Unit, Justice Management Division, or any other group which may have reviewed the documentation. Given that the government formally disclosed both Dr. Martell and Dr. Batipps in advance of the penalty phase of the trial, it would be highly unusual for the government to have no records concerning these experts from that time period.

Please advise no later than July 28. If we do not hear from you by then, we reserve our right to take the issue up with the court.

Thank you,

Katie

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PARTNER

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